

Geoffrey O. Evers, SBN 140541  
Evers Law Group, A Professional Corporation  
641 Fulton Avenue, Suite 130  
Sacramento, CA 95825  
tel: 916-974-3000  
fax: 916-974-7063

Attorney for Respondent  
Glen Mills, Inc.

CALIFORNIA REGIONAL WATER CONTROL BOARD  
CENTRAL VALLEY REGION

v.

CAL-SIERRA PROPERTIES and  
MERCED GENERAL CONSTRUCTION, INC.

CALIFORNIA REGIONAL WATER CONTROL BOARD  
CENTRAL VALLEY REGION

RE: WIDE AWAKE MERCURY MINE  
No. R5-2009-xxxx

REPLY BRIEF OF RESPONDENT GLEN MILLS, INC.

1. FACTUAL SUMMARY

Without regurgitating the historical facts set forth in the Water Board's draft clean-up and abatement order, it should be noted for the record that mining operations at the site began in the 1870s and ceased well before the 1990s when Respondent Glen Mills, Inc. took possession of the property. Further, it should be noted that Glen Mills, Inc. did not take title as an active owner or participant in the operations or maintenance of the property but rather only as security for a separate loan made to NBC Leasing, Inc. in March of 1992. In fact, the title and interest granted to Glen Mills, Inc. was actually substituting in this property as collateral for the balance due on the above-referenced loan in that NBC Leasing, Inc. had sold the prior property which secured the loan identified as the Catlett property.

Actual title did not transfer to Glen Mills, Inc. as it relates to the subject property until March 7, 1996. From that date forward Glen Mills, Inc. did not take any role, active or otherwise, in the maintenance, operation or oversight and supervision of the property.

Based upon the documents and historical summary of the Water Board's staff, it is evident that no mining, or in fact any operations, took place at the mine and/or on the property during the period of ownership of Glen Mills, Inc.

Glen Mills, Inc. held title to the land as security for a loan from March of 1996 through November 1, 2004, at which time the property was sold to Merced General Construction, Inc., another respondent in this case. For some inexplicable reason, the property transfer was not recorded by Merced General Construction, Inc. until January 1, 2005.

Glen Mills, Inc. is effectively nothing but a shell corporation with no assets per se in that Glen Mills who was a shareholder in Glen Mills, Inc. passed away in October of 1997. The remaining shareholder, Beverly Mills, is a 72 year old widow who effectively is living on a fixed income with no gainful employment noted. Further, Glen Mills, Inc., based upon research by counsel for Respondent, can find no insurance policies that would provide any coverage for monitoring, remediation and/or clean-up costs currently sought by the Water Board.

A. Glen Mills, Inc. Did Not Own, At Any Time, The Actual Parcels Upon Which The Wide Awake Mine Was Located.

A review of the documents produced by the Water Board, more specifically plot maps and assessor parcel numbers, reflects that the property which was held as a security by Glen Mills, Inc. finds that property and those specific parcels attributed to Glen Mills, Inc. and eventually transferred to Merced General Construction, Inc. did not include the Wide Awake Mine and/or the mining operations identified as the cause of the pollution. More specifically, Respondent Glen Mills, Inc. refers to parcel number 018-200-010 as the land owned by Glen Mills, Inc. and transferred to Merced General Construction, Inc. Thus, liability cannot be imputed to the owner of a parcel of land that did not contribute to or cause the contamination.

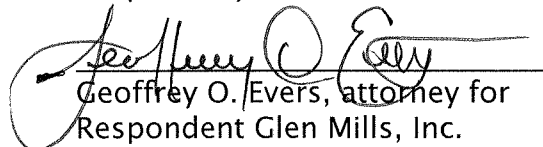
Further, in that Glen Mills, Inc. did not possess the mineral rights to the land, Glen Mills, Inc. could not and did not participate in the removal and/or mining of any of the minerals existing at the Wide Awake Mine site. Further, it would be impossible for Glen Mills, Inc. to comply with and/or file a report of discharge in that they did not own the land and were not legally responsible for monitoring and reporting any violations of law, statute or other requirements as it relates to contamination at the site.

## 2. CONCLUSION

Glen Mills, Inc. is not a proper respondent nor have they been properly identified with credible evidence as to the allegation by the State Water Board that it is in fact a potential responsible party and a discharger under the law. Additionally, it would be an exercise in futility for the Board to seek any recompense from Glen Mills, Inc. in that, as stated above, it is effectively a shell corporation with no viable assets. Even if the corporate shield for whatever reason would be pierced, there would be no means by which the remaining shareholder, Beverly Mills, could be assessed and subsequently forced to contribute to the clean-up and abatement based upon her age and standing in life.

Accordingly, Respondent Glen Mills, Inc. would simply ask that the Board dismiss the clean-up and abatement order as it relates to Glen Mills, Inc. and the Wide Awake Mine forthwith. The Board should concentrate on those parties that have participated in the management and/or operation of the subject mine for all compensation for clean-up and abatement in that these are the parties that will derive the economic benefit of ownership, use and maintenance of the land. If there are issues as it relates to contribution on a pro rata basis or otherwise, that battle should be fought out between the individuals and entities themselves.

Respectfully submitted



Geoffrey O. Evers, attorney for  
Respondent Glen Mills, Inc.